Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage	)	WC Docket No. 18-155
	)	

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA") submits these Reply Comments pursuant to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking in the above-captioned matter.[1]

I. INTRODUCTION AND SUMMARY.

The Commission should adopt its proposed rule to address any lingering terminating access stimulation. At the same time, NTCA urges the Commission to remain true to the stated purposes of this proceeding—eliminating access arbitrage—and to decline requests by a variety of parties to broaden the scope of this proceeding to recraft the existing intercarrier compensation ("ICC") and interconnection regimes as a whole. Matters outside the scope of access arbitrage as specifically raised in the *NPRM*, including bilateral disputes and vendettas between operators unrelated to the specific issues flagged, should be properly briefed and addressed through a complaint process or in the context of a separate rulemaking, in lieu of being wedged within this proceeding.

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[1] *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, FCC 18-68, Notice of Proposed Rulemaking (rel. June 5, 2018) ("*NPRM*").

II. THE COMMISSION SHOULD ADOPT ITS PROPOSED RULE AS SET FORTH IN THE *NPRM* TO ELIMINATE INCENTIVES FOR TRANSPORT ARBITRAGE IN THE CONTEXT OF ACCESS STIMULATION TRAFFIC.

NTCA's comments reiterated its long-running support for elimination of inefficiencies caused by access stimulators that threaten to undermine the broader integrity of ICC mechanisms, which remain essential components of cost recovery for carriers serving rural America.[2] NTCA further described its efforts to work in good faith with other providers to develop a proposal that would remove financial incentives to engage in access stimulation related to terminating transport rates by requiring access stimulating local exchange carriers ("LECs") to bear the cost of transporting terminating access traffic from the point of indirect interconnection. NTCA expressed support for the industry proposal, along with the Commission's proposal[3] to include an option for direct interconnection. NTCA explained that by allowing LECs and interexchange carriers ("IXCs") to interconnect directly in a defined instance of access stimulation, the Commission could avoid impacting other carriers that may share a tandem or centralized equal access with an access stimulator.[4]

Some commenters express concern about the direct interconnection option contained within the Commission's proposal.[5] These commenters do not allege that direct interconnection would represent an inefficient or ineffective resolution of concerns regarding arbitrage-generated transport charges. To the contrary, these commenters are supportive of direct interconnection in

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[2] Comments of NTCA at 2, WC Docket No. 18-155 (July 20, 2018) ("NTCA Comments") (internal citations omitted).

[3] *NPRM* ¶ 3.

[4] NTCA Comments at 3-4.

[5] Comments of CenturyLink at 6, WC Docket No. 18-155 (July 20, 2018) ("CenturyLink Comments"); Comments of ITTA at 3-4, WC Docket No. 18-155 (July 20, 2018) ("ITTA Comments"); Comments of AT&T at 12-14, WC Docket No. 18-155 (July 20, 2018) ("AT&T Comments").

other contexts, including, ironically, where the volume of calls being exchanged is sufficiently low to make direct routing economically inefficient.[6] Rather, commenters oppose direct interconnection in this case because, in their view, it does not deter enough (or, in essence, penalize enough) access stimulating LECs.[7]

But the Commission's goal here is neither to pick winners or losers nor to penalize any entity for choices that are lawful and permitted. Instead, the goal is to remove incentives for inefficient traffic routing that currently results in an IXC paying to route larger volumes of traffic to rural areas through indirect and more costly means. The Commission two-pronged proposal unquestionably achieves the goal of setting proper incentives, offering in particular an incentive for more efficient arrangements for exchanging traffic between LECs and IXCs in the case of such high volumes—and shifted financial responsibility if that does not occur. That the Commission's proposal enables a choice that may not be as burdensome on some access-stimulating LECs is irrelevant.

Moreover, AT&T's "whack-a-mole" concern with respect to access stimulators moving their traffic from LEC to LEC after direct interconnection is established is largely unfounded.[8] As a preliminary matter, it is worth noting that the inclusion of a direct interconnection option certainly does nothing to *increase or enhance* any "whack-a-mole" concern that may exist. Moreover, even if it were possible for access-stimulated traffic to migrate from end office to end office rapidly—and it is not clear that this can be achieved in as simple and quick a manner as

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[6] CenturyLink Comments at 9-10 (proposing that the Commission require any terminating carrier to either accept direct interconnection, regardless of the volume of traffic being exchanged, or to bear the cost of transport); AT&T Comments at 23 (expressing support for the CenturyLink proposal and arguing that it should apply to all switched access traffic – both originating and terminating)

[7] *See, e.g.*, ITTA Comments at 4.

[8] AT&T Comments at 12-14.

AT&T suggests—the proposed new rule would severely curtail any meaningful benefit for an access stimulator in doing so. If the LEC to which an access stimulator moves its traffic is itself already engaged in access stimulation, that LEC would be required to pay the financial responsibility for transport to (or accept direct interconnection at) the new end office under the new rule, rendering moot the effort to recapture some transport revenues by migrating traffic. Alternatively, if the new end office is associated with a LEC that is *not* already an access stimulator, that LEC will within one month of having a traffic imbalance itself become an access stimulator under the definition contained within existing rules,[9] and thus, within a few months of starting to receive the higher volumes of traffic, face the same responsibility either to pay itself for transport or permit direct interconnection.

In either case, the incentive to move traffic as AT&T suggests will be significantly curtailed (and any risk of stranded direct end office transport facilities substantially mitigated) because the rule would quickly (within a few months, if not right away) and effectively eliminate any transport revenues that can be gained through access stimulation. Thus, arguments that the direct interconnection option will somehow undermine the effectiveness of the rule or increase the prospect of traffic moving from LEC to LEC are without merit, and opposition to this option is clearly and solely based upon a desire to not merely eliminate incentives for transport arbitrage, but to avoid any responsibility whatsoever for the carriage of traffic.

Finally, Verizon and NCTA – The Internet & Television Association ("NCTA") support the Commission's proposed rule,[10] although NCTA urges the Commission to ensure that it is "implemented correctly"—referring in particular to the need to "ensure that access stimulating

[9] 47 C.F.R. § 61.3(bbb).

[10] Comments of Verizon at 4-5, WC Docket No. 18-155 (July 20, 2018) ("Verizon Comments"); Comments of NCTA at 1-2, WC Docket No. 18-155 (July 20, 2018) ("NCTA Comments").

LECs offer direct interconnection at reasonable rates, terms, and conditions."[11] NTCA does not disagree with this observation by NCTA. By definition, however, any regulated service such as terminating switched access transport (whether direct or indirect) must already be offered on terms that comport with the Communications Act and Commission rules.[12] NTCA would support the Commission reinforcing and reaffirming this legal backdrop in any order, along with a comment that any party that believes any rates, terms, or conditions are unjust or unreasonable can seek relief through the Commission's established tariff review and/or complaint procedures.[13] But the Commission should not go further in making specialized determinations or pronouncements as to what constitutes a just and reasonable transport rate in the absence of any review of specific costs and other facts that affect the development and application of rates in a given circumstance.

III. THE COMMISSION SHOULD DECLINE REQEUSTS TO TINKER WITH THE DEFINITION OF ACCESS STIMULATION, AND SHOULD AVOID UNDERTAKING MORE SWEEPING CHANGES THAT GO FAR BEYOND SURGICAL SOLUTIONS AIMED AT DISCRETE ARBITRAGE CONCERNS.

A few parties urge the Commission to modify the definition of "access stimulation." To avoid unintended consequences associated with changes in the scope of the rule, the Commission should retain the existing definition of "access stimulation" without modification.

As NTCA explained in its Comments,[14] the Commission developed, over many years, a substantial record prior to adopting the current definition. As the *USF/ICC Transformation Order* indicated, the definition currently in place reflected a careful balancing of concerns with respect both to "false positives" and "false negatives," and offered the best chance at identifying those

[11] NCTA Comments at 2-3.

[12] 47 U.S.C. §§ 201-202.

[13] 47 U.S.C. §§ 203, 208.

[14] NTCA Comments at 6-7.

entities engaged in so-called traffic pumping for the specific purpose of generating an extraordinary amount of terminating access revenues.[15]

Notably, no party has since claimed that the existing definition has failed in identifying entities engaged in access stimulation. At most, a handful of IXCs have complained about transport arbitrage, and there have been a handful of individual disputes with respect to the role of intermediate providers in access stimulation.[16] But these are precisely the problems that the Commission's current proposed rule would help to address by either cutting the intermediate provider effectively out of the call path (in the case of direct interconnection) or removing the incentives for access stimulation by requiring the access stimulating LEC, rather than the IXC, to pay the intermediate provider for any transport and tandem switching (in the case of "flipped" financial responsibility). Thus, as ITTA rightly notes, there is no need now to revisit or tinker with the definition of "access stimulation," as doing so might only complicate or even undermine attempts to close those specific arbitrage loopholes that have been identified and could have other unforeseen, unintended consequences with respect to how parties exchange and pay one another for calls.[17]

The Commission should likewise decline requests by large IXCs to broaden the scope of this proceeding beyond a targeted focus on access stimulation.[18] Issues related to sweeping ICC reforms necessitate a separate proceeding and raise complicated issues including cost recovery and universal service.

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[15] *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,879 ¶ 672 (2011) ("*USF/ICC Transformation Order*").

[16] *See, e.g.*, Comments of HD Tandem at 8-11, WC Docket No. 18-155 (July 20, 2018).

[17] ITTA Comments at 5-6.

[18] Verizon Comments at 6-7; CenturyLink Comments at 9-10; AT&T Comments at 21-24; Comments of Sprint Corporation at 2-3, WC Docket No. 18-155 (July 20, 2018).

The same is true with respect to establishing network edges captured in the CenturyLink proposal to compel direct interconnection whenever requested by an IXC.[19] Even CenturyLink acknowledges the intended breadth of its proposal, indicating it goes beyond arbitrage and would apply in "all other contexts."[20] CenturyLink also notes the clear tie between its proposal and the ultimate end state of a bill-and-keep environment, even as it sidesteps the fact that its proposal—which would essentially confer upon each IXC an inalienable right to select its preferred "edge"—overrides the states' unmistakable role in defining the point (the "edge") at which bill-and-keep applies.[21] If the Commission desires to address comprehensive ICC reform and to provide clear guidance to the states on network edge considerations in a bill-and-keep world, the proper place for doing so is not in this docket aimed at addressing access arbitrage. Such measures require their own proceeding, and more thoughtful analysis and a more complete and detailed record than a 15-day reply comment cycle permits.

Thus, while the Commission can and should move to address a select few arbitrage concerns raised in the *NPRM,* the Commission should not open a can of worms related to broader ICC reform in the context of this narrow proceeding.

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[19] *NPRM* ¶ 23; CenturyLink Comments at 9-10.

[20] CenturyLink Comments at 10.

[21] *Id.* at 16-17.

IV. CONCLUSION

For the foregoing reasons, the Commission should proceed with adoption of the rule proposed in the *NPRM* to address transport access arbitrage specifically in the context of access stimulation, and should decline efforts to hijack this limited terminating access arbitrage proceeding in pursuit of much broader and far-ranging reforms or to litigate specific unrelated disputes with respect to the exchange of traffic with other carriers.

Respectfully submitted,

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